

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1835

Introduced by Assembly Member Fletcher

February 22, 2012

An act to amend ~~Section 1203.067~~ Sections 1203.067, 3000.08, and 3008 of the Penal Code, relating to sex crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1835, as amended, Fletcher. Sex offenders: probation conditions.

Existing law, the Sex Offender Registration Act, requires persons convicted of specified sex offenses to register with local authorities for life while residing, located, attending school, or working in California. Willful failure to register, as required, is a misdemeanor, or a felony, depending on the underlying offense.

Under existing law, a person who has been convicted of specified felonies related to sexual abuse, including rape and lewd or lascivious acts with a child, is required to comply with specified conditions while on formal probation *or intensive and specialized formal probation*. These conditions include, but are not limited to, participating in an approved sex offender management program and waiving the privilege against self-incrimination and participation in polygraph examinations.

This bill would require compulsory participation in polygraph examinations as part of the sex offender management program, and would require the participants to answer questions truthfully, but would remove the requirement that the participant to waive his or her privilege against self-incrimination.

Under existing law, a person released from state prison after serving a sentence or whose sentence has been deemed served for various

crimes, including a serious felony, a violent felony, or a crime where a person is classified as a High Risk Sex Offender, is subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation.

This bill would also require a person who is released on postrelease supervision and who is subsequently reclassified as a High Risk Sex Offender, to be transferred to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.067 of the Penal Code is amended
2 to read:

3 1203.067. (a) Notwithstanding any other law, before probation
4 may be granted to ~~any~~ a person convicted of a felony specified in
5 Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is
6 eligible for probation, the court shall do all of the following:

7 (1) Order the defendant evaluated pursuant to Section 1203.03,
8 or similar evaluation by the county probation department.

9 (2) Conduct a hearing at the time of sentencing to determine if
10 probation of the defendant would pose a threat to the victim. The
11 victim shall be notified of the hearing by the prosecuting attorney
12 and given an opportunity to address the court.

13 (3) Order ~~any~~ a psychiatrist or psychologist appointed pursuant
14 to Section 288.1 to include a consideration of the threat to the
15 victim and the defendant's potential for positive response to
16 treatment in making his or her report to the court. Nothing in this
17 section shall be construed to require the court to order an
18 examination of the victim.

19 (b) On or after July 1, 2012, the terms of probation for persons
20 placed on formal probation for an offense that requires registration
21 pursuant to Sections 290 to 290.023, inclusive, shall include all of
22 the following:

23 (1) Persons placed on formal probation prior to July 1, 2012,
24 shall participate in an approved sex offender management program,
25 following the standards developed pursuant to Section 9003, for

1 a period of not less than one year or the remaining term of
2 probation if it is less than one year. The length of the period in the
3 program is to be determined by the certified sex offender
4 management professional in consultation with the probation officer
5 and as approved by the court.

6 (2) Persons placed on formal probation on or after July 1, 2012,
7 shall successfully complete a sex offender management program,
8 following the standards developed pursuant to Section 9003, as a
9 condition of release from probation. The length of the period in
10 the program shall be not less than one year, up to the entire period
11 of probation, as determined by the certified sex offender
12 management professional in consultation with the probation officer
13 and as approved by the court.

14 (3) ~~Waiver of any privilege against self-incrimination and~~
15 ~~Compelled~~ participation in polygraph examinations, *in which the*
16 *person shall answer questions truthfully and* which shall be part
17 of the sex offender management program.

18 (4) ~~Waiver of any~~ psychotherapist-patient privilege to enable
19 communication between the sex offender management professional
20 and supervising probation officer, pursuant to Section 290.09.

21 (c) ~~Any~~ A defendant ordered to be placed in an approved sex
22 offender management program pursuant to subdivision (b) shall
23 be responsible for paying the expense of his or her participation
24 in the program as determined by the court. The court shall take
25 into consideration the ability of the defendant to pay, and no
26 defendant shall be denied probation because of his or her inability
27 to pay.

28 *SEC. 2. Section 3000.08 of the Penal Code, as amended by*
29 *Section 17 of Chapter 12 of the First Extraordinary Session of the*
30 *Statutes of 2011, is amended to read:*

31 3000.08. (a) ~~Persons~~ A person released from state prison on
32 or after October 1, 2011, after serving a prison term or, whose
33 sentence has been deemed served pursuant to Section 2900.5, for
34 any of the following crimes shall be subject to the jurisdiction of
35 and parole supervision by the Department of Corrections and
36 Rehabilitation:

37 (1) A serious felony as described in subdivision (c) of Section
38 1192.7.

39 (2) A violent felony as described in subdivision (c) of Section
40 667.5.

1 (3) A crime for which the person was sentenced pursuant to
2 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
3 of subdivision (c) of Section 1170.12.

4 (4) ~~Any~~ A crime where the person eligible for release from
5 prison is classified as a High Risk Sex Offender.

6 (5) ~~Any~~ A crime where the person is required, as a condition of
7 parole, to undergo treatment by the Department of Mental Health
8 pursuant to Section 2962.

9 (b) Notwithstanding any other provision of law, all other
10 offenders released from prison shall be placed on postrelease
11 supervision pursuant to Title 2.05 (commencing with Section
12 3450).

13 (c) Notwithstanding subdivision (a), any of the following
14 persons released from state prison shall be subject to the
15 jurisdiction of, and parole supervision by, the Department of
16 Corrections and Rehabilitation for a period of parole up to three
17 years or the parole term the person was subject to at the time of
18 the commission of the offense, whichever is greater:

19 (1) The person is required to register as a sex offender pursuant
20 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
21 1, and was subject to a period of parole exceeding three years at
22 the time he or she committed a felony for which they were
23 convicted and subsequently sentenced to state prison.

24 (2) The person was subject to parole for life pursuant to Section
25 3000.1 at the time of the commission of the offense that resulted
26 in a conviction and state prison sentence.

27 (d) Except as described in subdivision (c), ~~any~~ a person who is
28 convicted of a felony that requires community supervision and
29 who still has a period of state parole to serve shall discharge from
30 state parole at the time of release to community supervision.

31 *(e) If, after release from prison, a person on postrelease*
32 *supervision pursuant to Title 2.05 (commencing with Section 3450)*
33 *is reclassified as a High Risk Sex Offender, the person shall be*
34 *transferred to the jurisdiction of, and parole supervision by, the*
35 *Department of Corrections and Rehabilitation. The person shall*
36 *be granted credit toward his or her period of parole supervision*
37 *for any time spent on the postrelease supervision prior to the*
38 *reclassification and transfer of supervision.*

39 ~~(e)~~

1 (f) This section shall operative only until July 1, 2013, and as
2 of January 1, 2014, is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2014, deletes or extends that date.

4 SEC. 3. *Section 3000.08 of the Penal Code, as amended by*
5 *Section 18 of Chapter 12 of the First Extraordinary Session of the*
6 *Statutes of 2011, is amended to read:*

7 3000.08. (a) Persons released from state prison prior to or on
8 or after July 1, 2013, after serving a prison term or, whose sentence
9 has been deemed served pursuant to Section 2900.5, for any of the
10 following crimes shall be subject to parole supervision by the
11 Department of Corrections and Rehabilitation and the jurisdiction
12 of the court in the county where the parolee is released or resides
13 for the purpose of hearing petitions to revoke parole and impose
14 a term of custody:

15 (1) A serious felony as described in subdivision (c) of Section
16 1192.7.

17 (2) A violent felony as described in subdivision (c) of Section
18 667.5.

19 (3) A crime for which the person was sentenced pursuant to
20 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
21 of subdivision (c) of Section 1170.12.

22 (4) ~~Any~~ A crime where the person eligible for release from
23 prison is classified as a High Risk Sex Offender.

24 (5) ~~Any~~ A crime where the person is required, as a condition of
25 parole, to undergo treatment by the Department of Mental Health
26 pursuant to Section 2962.

27 (b) Notwithstanding any other provision of law, all other
28 offenders released from prison shall be placed on postrelease
29 supervision pursuant to Title 2.05 (commencing with Section
30 3450).

31 (c) At any time during the period of parole of a person subject
32 to this section, if ~~any~~ a parole agent or peace officer has probable
33 cause to believe that the parolee is violating ~~any~~ a term or condition
34 of his or her parole, the agent or officer may, without warrant or
35 other process and at any time until the final disposition of the case,
36 arrest the person and bring him or her before the parole authority,
37 or the parole authority may, in its discretion, issue a warrant for
38 that person's arrest.

39 (d) Upon review of the alleged violation and a finding of good
40 cause that the parolee has committed a violation of law or violated

1 his or her conditions of parole, the parole authority may impose
2 additional and appropriate conditions of supervision, including
3 rehabilitation and treatment services and appropriate incentives
4 for compliance, and impose immediate, structured, and intermediate
5 sanctions for parole violations, including flash incarceration in a
6 county jail. Periods of “flash incarceration,” as defined in
7 subdivision (e) are encouraged as one method of punishment for
8 violations of a parolee’s conditions of parole. Nothing in this
9 section is intended to preclude referrals to a reentry court pursuant
10 to Section 3015.

11 (e) “Flash incarceration” is a period of detention in county jail
12 due to a violation of a parolee’s conditions of parole. The length
13 of the detention period can range between one and 10 consecutive
14 days. Shorter, but if necessary more frequent, periods of detention
15 for violations of a parolee’s conditions of parole shall appropriately
16 punish a parolee while preventing the disruption in a work or home
17 establishment that typically arises from longer periods of detention.

18 (f) If the supervising parole agency has determined, following
19 application of its assessment processes, that intermediate sanctions
20 up to and including flash incarceration are not appropriate, the
21 supervising agency shall petition the revocation hearing officer
22 appointed pursuant to Section 71622.5 of the Government Code
23 in the county in which the parolee is being supervised to revoke
24 parole. At any point during the process initiated pursuant to this
25 section, a parolee may waive, in writing, his or her right to counsel,
26 admit the parole violation, waive a court hearing, and accept the
27 proposed parole modification. The petition shall include a written
28 report that contains additional information regarding the petition,
29 including the relevant terms and conditions of parole, the
30 circumstances of the alleged underlying violation, the history and
31 background of the parolee, and any recommendations. The Judicial
32 Council shall adopt forms and rules of court to establish uniform
33 statewide procedures to implement this subdivision, including the
34 minimum contents of supervision agency reports. Upon a finding
35 that the person has violated the conditions of parole, the revocation
36 hearing officer shall have authority to do any of the following:

37 (1) Return the person to parole supervision with modifications
38 of conditions, if appropriate, including a period of incarceration
39 in county jail.

1 (2) Revoke parole and order the person to confinement in the
2 county jail.

3 (3) Refer the person to a reentry court pursuant to Section 3015
4 or other evidence-based program in the court's discretion.

5 (g) Confinement pursuant to paragraphs (1) and (2) of
6 subdivision (f) shall not exceed a period of 180 days in the county
7 jail.

8 (h) Notwithstanding any other provision of law, in any case
9 where Section 3000.1 applies to a person who is on parole and
10 there is good cause to believe that the person has committed a
11 violation of law or violated his or her conditions of parole, and
12 there is imposed a period of imprisonment of longer than 30 days,
13 that person shall be remanded to the custody of the Department of
14 Corrections and Rehabilitation and the jurisdiction of the Board
15 of Parole Hearings for the purpose of future parole consideration.

16 (i) Notwithstanding subdivision (a), any of the following persons
17 released from state prison shall be subject to the jurisdiction of,
18 and parole supervision by, the Department of Corrections and
19 Rehabilitation for a period of parole up to three years or the parole
20 term the person was subject to at the time of the commission of
21 the offense, whichever is greater:

22 (1) The person is required to register as a sex offender pursuant
23 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
24 1, and was subject to a period of parole exceeding three years at
25 the time he or she committed a felony for which they were
26 convicted and subsequently sentenced to state prison.

27 (2) The person was subject to parole for life pursuant to Section
28 3000.1 at the time of the commission of the offense that resulted
29 in a conviction and state prison sentence.

30 (j) Parolees subject to this section who are being held for a
31 parole violation in a county jail on July 1, 2013, shall be subject
32 to the jurisdiction of the Board of Parole Hearings.

33 (k) Except as described in subdivision (c), ~~any~~ a person who is
34 convicted of a felony that requires community supervision and
35 who still has a period of state parole to serve shall discharge from
36 state parole at the time of release to community supervision.

37 *(l) If, after release from prison, a person on postrelease*
38 *supervision pursuant to Title 2.05 (commencing with Section 3450)*
39 *is reclassified as a High Risk Sex Offender, the person shall be*
40 *transferred to the jurisdiction of, and parole supervision by, the*

1 *Department of Corrections and Rehabilitation. The person shall*
2 *be granted credit toward his or her period of parole supervision*
3 *for any time spent on the postrelease supervision prior to the*
4 *reclassification and transfer of supervision.*

5 ~~(t)~~

6 (m) This section shall become operative on July 1, 2013.

7 SEC. 4. Section 3008 of the Penal Code is amended to read:

8 3008. (a) The Department of Corrections and Rehabilitation
9 shall ensure that all parolees under active supervision who are
10 deemed to pose a high risk to the public of committing sex crimes,
11 as determined by the State-Authorized Risk Assessment Tool for
12 Sex Offenders (SARATSO), as set forth in Sections 290.04 to
13 290.06, inclusive, are placed on intensive and specialized parole
14 supervision and are required to report frequently to designated
15 parole officers. The department may place any other parolee
16 convicted of an offense that requires him or her to register as a sex
17 offender pursuant to Section 290 who is on active supervision on
18 intensive and specialized supervision and require him or her to
19 report frequently to designated parole officers.

20 (b) The department shall develop and, at the discretion of the
21 secretary, and subject to an appropriation of the necessary funds,
22 may implement a plan for the implementation of relapse prevention
23 treatment programs, and the provision of other services deemed
24 necessary by the department, in conjunction with intensive and
25 specialized parole supervision, to reduce the recidivism of sex
26 offenders.

27 (c) The department shall develop control and containment
28 programming for sex offenders who have been deemed to pose a
29 high risk to the public of committing a sex crime, as determined
30 by the SARATSO, and shall require participation in appropriate
31 programming as a condition of parole.

32 (d) On or after July 1, 2012, the parole conditions of a person
33 released on parole for an offense that requires registration pursuant
34 to Sections 290 to 290.023, inclusive, shall include all of the
35 following:

36 (1) ~~Persons~~ *A person* placed on parole prior to July 1, 2012,
37 shall participate in an approved sex offender management program,
38 following the standards developed pursuant to Section 9003, for
39 a period of not less than one year or the remaining term of parole
40 if it is less than one year. The length of the period in the program

1 is to be determined by the certified sex offender management
2 professional in consultation with the parole officer and as approved
3 by the court.

4 (2) Persons placed on parole on or after July 1, 2012, shall
5 successfully complete a sex offender management program,
6 following the standards developed pursuant to Section 9003, as a
7 condition of parole. The length of the period in the program shall
8 be not less than one year, up to the entire period of parole, as
9 determined by the certified sex offender management professional
10 in consultation with the parole officer and as approved by the court.

11 ~~(3) Waiver of any privilege against self-incrimination and~~
12 ~~Compelled participation in polygraph examinations, in which the~~
13 ~~person shall answer questions truthfully and~~ which shall be part
14 of the sex offender management program.

15 ~~(4) Waiver of any psychotherapist-patient privilege to enable~~
16 communication between the sex offender management professional
17 and supervising parole officer, pursuant to Section 290.09.

18 (e) ~~Any~~ A defendant ordered to be placed in an approved sex
19 offender management treatment program pursuant to subdivision
20 (d) shall be responsible for paying the expense of his or her
21 participation in the program. The department shall take into
22 consideration the ability of the defendant to pay, and no defendant
23 shall be denied discharge onto parole because of his or her inability
24 to pay.

25 ~~SECTION 1. Section 1203.067 of the Penal Code is amended~~
26 ~~to read:~~

27 ~~1203.067. (a) Notwithstanding any other law, before probation~~
28 ~~may be granted to a person convicted of a felony specified in~~
29 ~~Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is~~
30 ~~eligible for probation, the court shall do all of the following:~~

31 ~~(1) Order the defendant evaluated pursuant to Section 1203.03,~~
32 ~~or similar evaluation by the county probation department.~~

33 ~~(2) Conduct a hearing at the time of sentencing to determine if~~
34 ~~probation of the defendant would pose a threat to the victim. The~~
35 ~~victim shall be notified of the hearing by the prosecuting attorney~~
36 ~~and given an opportunity to address the court.~~

37 ~~(3) Order a psychiatrist or psychologist appointed pursuant to~~
38 ~~Section 288.1 to include a consideration of the threat to the victim~~
39 ~~and the defendant's potential for positive response to treatment in~~
40 ~~making his or her report to the court. Nothing in this section shall~~

1 be construed to require the court to order an examination of the
2 victim.

3 (b) On or after July 1, 2012, the terms of probation for a person
4 placed on formal probation for an offense that requires registration
5 pursuant to Sections 290 to 290.023, inclusive, shall include all of
6 the following:

7 (1) A person placed on formal probation prior to July 1, 2012,
8 shall participate in an approved sex offender management program,
9 following the standards developed pursuant to Section 9003, for
10 a period of not less than one year or the remaining term of
11 probation if it is less than one year. The length of the period in the
12 program is to be determined by the certified sex offender
13 management professional in consultation with the probation officer
14 and as approved by the court.

15 (2) A person placed on formal probation on or after July 1, 2012,
16 shall successfully complete a sex offender management program,
17 following the standards developed pursuant to Section 9003, as a
18 condition of release from probation. The length of the period in
19 the program shall be not less than one year, up to the entire period
20 of probation, as determined by the certified sex offender
21 management professional in consultation with the probation officer
22 and as approved by the court.

23 (3) Waiver of the privilege against self-incrimination and
24 participation in polygraph examinations, which shall be part of the
25 sex offender management program.

26 (4) Waiver of psychotherapist-patient privilege to enable
27 communication between the sex offender management professional
28 and supervising probation officer, pursuant to Section 290.09.

29 (e) A defendant ordered to be placed in an approved sex offender
30 management program pursuant to subdivision (b) shall be
31 responsible for paying the expense of his or her participation in
32 the program as determined by the court. The court shall take into
33 consideration the ability of the defendant to pay, and no defendant
34 shall be denied probation because of his or her inability to pay.